



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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(603) 271-1370 FAX (603) 271-1381



Cleary Cleaners, LLC
7 Gonic Road
Rochester, NH 03867

ADMINISTRATIVE ORDER
No. WMD 03-15

July 11, 2003

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Cleary Cleaners pursuant to RSA 147-A:14. This Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH 03301.
2. Cleary Cleaners, LLC ("Cleary") is a New Hampshire corporation that registered with the New Hampshire Secretary of State's Office on November 18, 1999. Cleary has a mailing address of, and operates a facility located at, 7 Gonic Road, Rochester, NH 03867.

C. STATEMENT OF FACTS AND LAW

1. RSA 147-A authorizes DES to regulate the management, including storage, treatment, containerization, transportation, and disposal of hazardous wastes. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted New Hampshire Administrative Rules Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Cleary is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on July 25, 1985. EPA Identification Number NHD981070196 was assigned to Cleary's site located at 7 Gonic Road, Rochester, NH (the "Facility").
3. On February 6, 2003, DES personnel conducted an inspection (the "Inspection") of the Facility. The purpose of the Inspection was to determine Cleary's compliance status relative to RSA 147-A and the Hazardous Waste Rules.
4. During the Inspection, DES personnel observed hazardous wastes stored in the outdoor hazardous waste storage area, and in the "Dry Cleaning Area" located adjacent to three (3) 80-pound dry cleaning machines.
5. Env-Wm 502.01 requires a generator of a waste to determine if the waste is a hazardous waste.

6. At the time of the Inspection, no formal hazardous waste determination had been performed on the waste lamps generated by Cleary. DES personnel also confirmed that Cleary has disposed of waste lamps in the on-site dumpster.
7. Env-Wm 509.02(a)(1), which references 40 CFR Part 265.15, General Inspection Requirements, requires full quantity generators to conduct inspections of the Facility, including the hazardous waste storage area, and to document the inspections.
8. At the time of the Inspection, Cleary was not conducting and documenting inspections of the outdoor hazardous waste storage area and the "Dry Cleaning Area."
9. Env-Wm 509.02(a)(2), which references 40 CFR Part 265.16, Personnel Training, requires full quantity generators to maintain a personnel training program for its employees responsible for handling hazardous waste.
10. At the time of the Inspection, Cleary did not have a personnel training program and was not providing hazardous waste training to emergency coordinators and employees responsible for handling hazardous waste.
11. Env-Wm 509.02(a)(5), which references 40 CFR Part 265, Subpart D, Contingency Plan and Emergency Procedures, requires full quantity generators to maintain a contingency plan designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.
12. At the time of the Inspection, Cleary did not have a hazardous waste contingency plan. Documents entitled "*Hazard Communication Program*" and "*OSHA Safety/Meeting Minutes*" were made available, but did not address the requirements for a contingency plan.
13. Env-Wm 509.02(c)(3) requires generators to provide security measures at all outdoor hazardous waste storage areas. Required security measures include posting a sign with the legend, "Danger- Unauthorized Personnel Keep Out" at each entrance to the hazardous waste storage area.
14. At the time of Inspection, Cleary's outdoor hazardous waste storage area did not have a sign posted with the legend "Danger- Unauthorized Personnel Keep Out".
15. Env-Wm 509.03(d), which references Env-Wm 507.01(a)(3), requires generators to ensure that containers storing hazardous waste be closed at all times, except when waste is being added to or removed from the containers.
16. During the Inspection of Cleary's Dry Cleaning Area, the one (1) satellite accumulation container of hazardous waste "Lint with Perchloroethylene/water mixture" and the one (1) satellite accumulation container of hazardous waste "Perchloroethylene" were not closed.
17. Env-Wm 509.03(g) requires all satellite storage containers used for the storage of hazardous waste be marked with the following information at the time they are first used to store wastes: the words "hazardous waste" and words that identify the contents of the container.

18. During the Inspection of Cleary's Dry Cleaning Area, the one (1) satellite accumulation container of hazardous waste "Lint with Perchloroethylene/water mixture" and the one (1) satellite accumulation container of hazardous waste "Perchloroethylene" were not marked with the words "hazardous waste" and words that identify the contents of the container.
19. Env-Wm 510.02 (d) requires that the generator retain one (1) copy of the manifest, give five (5) copies to the transporter, and forward one (1) copy to the destination state and one (1) copy to DES within five (5) days of shipment.
20. At the time of the Inspection, Cleary had on file the following nine (9) hazardous waste manifests that had not been submitted to DES:
 - (a) Manifest No. MAM929228, dated 4/11/01
 - (b) Manifest No. MAM971511, dated 7/19/01
 - (c) Manifest No. MAM982618, dated 8/31/01
 - (d) Manifest No. MAM990553, dated 10/9/01
 - (e) Manifest No. MAM996490, dated 11/1/01
 - (f) Manifest No. MAQ010167, dated 11/21/01
 - (g) Manifest No. MAQ096983, dated 12/3/01
 - (h) Manifest No. MAQ104127, dated 12/18/01
 - (i) Manifest No. MAQ205438, dated 11/11/02

D. DETERMINATION OF VIOLATIONS

Cleary has violated Env-Wm 502.01 by failing to determine if its waste is a hazardous waste.

2. Cleary has violated Env-Wm 509.02(a)(1) by failing to conduct inspections of the Facility, including the outdoor hazardous waste storage area and the "Dry Cleaning Area."
3. Cleary has violated Env-Wm 509.02(a)(2) by failing to maintain a personnel training program and to adequately train all emergency coordinators and personnel handling hazardous waste.
4. Cleary has violated Env-Wm 509.02(a)(5) by failing to maintain a contingency plan at the Facility.
5. Cleary has violated Env-Wm 509.02(c)(3) by failing to post a sign with the legend "Danger- Unauthorized Personnel Keep Out" at the outdoor hazardous waste storage area.
6. Cleary has violated Env-Wm 509.03(d) by failing to close all hazardous waste satellite containers except to add or remove waste.
7. Cleary has violated Env-Wm 509.03(g) by failing to mark hazardous waste satellite storage containers with the words "hazardous waste" and words that identify the contents of the container at the time they are first used to store wastes.

8. Cleary has violated Env-Wm 510.02(d) by failing to submit copies of nine (9) hazardous waste manifests to DES.

E. ORDER

Based on the above findings, DES hereby orders Cleary as follows:

Perform a hazardous waste determination as specified in Env-Wm 502.01 for the waste lamps; and submit the results along with any supporting data used to make the hazardous waste determination to DES. Waste determined to be hazardous must be handled pursuant to the requirements of the Hazardous Waste Rules, Env-Wm 100-1100.

30 DAYS

Alternatively, Cleary may elect to manage waste lamps as "universal waste" in accordance with Env-Wm 1100. Enclosed please find the DES Environmental Fact Sheet #WMD-HW-7 "Universal Waste Lamps: Management Requirements for Handlers and Transporters," and a DES "Fluorescent Lamp and Ballast Recycling Facility" list to aid you with the determinations.

2. The Facility must develop and implement a general inspection program, as specified in Env-Wm 509.02(a)(1), which references 40 CFR Part 265.15, General Inspection Requirements. This program must provide for, at a minimum, weekly inspections of the outdoor hazardous waste storage area, and monthly inspections of satellite containers that have accumulated greater than ten (10) gallons of hazardous waste in the Dry Cleaning Area.

30 DAYS

Note: A February 18, 2003 submittal from Mr. Jay Paul Cleary, General Manager, stated that "We are in the process of revising our Closing Checklist & Leak Detection Log to include an inspection of the hazardous waste storage area at the close of each business day." A copy of the completed inspection log (documenting an actual inspection) needs to be submitted.

3. The Facility must develop and maintain a personnel training program as specified in Env-Wm 509.02(a)(2), which references 40 CFR 265.16, Personnel Training, including:

60 DAYS

- a. Ensure that all emergency coordinators and personnel handling hazardous waste receive initial hazardous waste training and annual updates [40 CFR 265.16(c)]; and

- b. Ensure that the following documents and records are maintained at the Facility:

Job title for each position at the Facility related to hazardous waste management, and the name of the employee filling each job;

2. A written job description, including requisite skills, education and duties, for positions with hazardous waste management duties;
3. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position with hazardous waste management duties; and,
4. Documentation that training has been completed.

4. The Facility must prepare and maintain a current site specific contingency plan as specified in Env-Wm 509.02(a)(5), which references 40 CFR 265 Subpart D, Contingency Plan and Emergency Procedures, including, but not limited to:

60 DAYS

Describing the actions Facility personnel must take to adequately respond to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste [40 CFR 265.52(a)];

- b. Listing the arrangements with local police departments, fire departments, hospitals, contractors, and state and local response teams [40 CFR 265.52(c)];
- c. Listing names, addresses, and phone numbers of primary and alternate emergency coordinators [40 CFR 265.52(d)];
- d. Listing all emergency equipment at the Facility, including the location, physical description, and capabilities of each item [40 CFR 265.52(e)];
- e. Describing an evacuation plan for Facility personnel including the signal to begin evacuation and primary and alternate evacuation routes [40 CFR 265.52(f)]; and
- f. Submitting copies of the contingency plan to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services [40 CFR 265.53].

5. Ensure that a sign with the legend "Danger- Unauthorized Personnel Keep Out", or any other sign that indicates that only authorized personnel are allowed to enter the area and that entry can be dangerous, is posted at the outdoor hazardous waste storage area, as specified in Env-Wm 509.02(c)(3). **30 DAYS**

6. Ensure that all hazardous waste satellite containers are properly sealed, and bungs or lids are closed except when wastes are actually being added to or removed from the container as specified in Env-Wm 509.03(d) which references Env-Wm 507.01(a)(3). **COMPLETED**

Note: During the February 6, 2003 DES inspection, Cleary personnel properly closed all hazardous waste satellite containers.

7. Ensure that all hazardous waste satellite containers are clearly marked with the words "hazardous waste" and words to identify the contents of the container at the time they are first used to store wastes as specified in Env-Wm 509.03(g). **COMPLETED**

Note: During the February 6, 2003 DES inspection, Cleary personnel marked all hazardous waste satellite containers with the words "hazardous waste" and words to identify the contents of the container.

8. Submit the nine (9) hazardous waste manifests to DES and properly retain and distribute manifest copies for future shipments of hazardous waste. **COMPLETED**

Note: During the February 6, 2003 inspection, DES personnel took possession of the nine (9) manifest copies and delivered them to DES's Reporting and information Management Section.

9. Submit a written status report to DES within thirty-five (35) calendar days, and a second report within sixty-five (65) calendar days of the date of this Order, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance and copies of any written plans or proceedings developed.

10. Please address submittals, **other than appeals**, to:

Kenneth W. Marschner, Administrator
DES, WMD
6 Hazen Drive
Concord, New Hampshire 03301

F. APPEAL

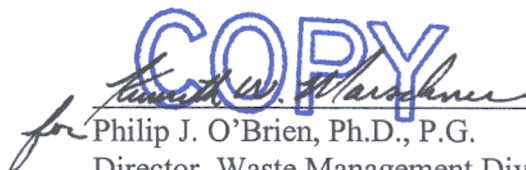
Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from DES's Public Information Center at (603) 271-2975 or at <http://www.des.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Cleary of the obligation to comply with the Order.


G. OTHER PROVISIONS

Please note that RSA Ch. 147-A provides for civil and criminal penalties and administrative fines for violations of the statute or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 147-A:17 provides for civil forfeitures of up to \$50,000 for each day of a continuing violation, in addition to enforcement by injunctive relief.

DES will continue to monitor the compliance status of Cleary to determine whether the Facility has come into, and is maintaining, full compliance with the applicable rules. Future violations will result in additional enforcement action being taken. Cleary is required to maintain compliance with all on-going requirements, including those identified as being "COMPLETED" in Section E of the Order.

Cleary may assert a confidentiality claim covering part or all of the information requested which constitutes a trade secret, in accordance with RSA 147-A:7, II. If no such claim accompanies the information when it is received by DES, it may be made available to the public by DES without further notice to Cleary.


Philip J. O'Brien, Ph.D., P.G.
Director, Waste Management Division
Department of Environmental Services


Michael P. Nolin
Commissioner
Department of Environmental Services

CERTIFIED MAIL/RRR# 7000 1670 0000 0585 7820

cc: DB/RCRA/ORDER/ARCHIVE
Gretchen Rule, Esq., Administrator, DES Legal Unit
Public Information Coordinator, DES
Jennifer Patterson, NHDOJ-OAG
City Clerk, Rochester, NH
Mr. Jay Cleary Sr., Owner, Cleary Cleaners
Jay Paul Cleary, General Manager, Cleary Cleaners

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Administrative Order No. WMD 03-15
page 8 of 8

e-mail: John Duclos, HWCS

enclosure: DES Environmental Fact Sheet #WMD-HW-7 "Universal Waste Lamps: Management Requirements..
DES "Fluorescent Lamp and Ballast Recycling Facility" list
Hazardous Waste Generator Inspection Modules
Container Inventories

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